

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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LAZARO BURT,

Plaintiff,

**ORDER**

- against -

05 CV 4493 (KAM)

ROLANDO ALEMAN and  
MIGDALIA RODRIGUEZ,

Defendants.

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Plaintiff commenced this action on September 22, 2005 asserting claims of malicious prosecution and violations of due process claims pursuant to 42 U.S.C. § 1983. In a Memorandum and Order dated April 29, 2008, the district court granted summary judgment for defendant Rodriguez on the malicious prosecution claim but denied summary judgment on the due process claim.<sup>1</sup> On February 5, 2009, this Court set a schedule, which had been jointly proposed by the parties, for preparation of a Joint Pretrial Order ("JPO"). Plaintiff was to provide a draft of the JPO to defendant by April 2, 2009; defendant was to provide her draft to plaintiff by April 16; and the parties were to file the final version of the JPO with the Court by May 1, 2009.

By letter dated April 21, 2009, defendant requests that the May 1 deadline be extended until after the district court rules on a motion which defendant intends to file under Federal Rule of Civil Procedure 54(b) seeking reconsideration of the earlier summary judgment decision. Defendant argues that the Supreme Court's January 21, 2009, decision in Pearson v. Callahan, 129 S. Ct. 808 (2009), has called into question the court's denial of summary judgment on defendant's due process claim. By letter dated April 27, 2009, plaintiff disputes defendant's

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<sup>1</sup>The claims against defendant Aleman were voluntarily dismissed on July 10, 2006.

arguments regarding Pearson and objects to an extension of time for preparation of the JPO, contending that defendant is already in violation of the Court's scheduling order which required defendant to submit a draft of the JPO to plaintiff by April 16, 2009.

In considering defendant's request, the Court notes that the decision in Pearson was issued on January 21, 2009, prior to the Court's scheduling Order and three months prior to the defendant's current request for an extension. It is unclear why no request for a pre-motion conference was made to the district court in the interim three-month period or why the defendant waited until now, after the deadline for submission of her version of the JPO had passed, to seek a stay. The Court further notes that Pearson does not appear to change the district court's summary judgment analysis significantly. Nevertheless, the Court grants defendant's request to postpone submission of the JPO until April 29, 2009, so that a request may be made to the district court for a pre-motion conference and a further stay of the Order setting submission deadlines for the JPO.

**SO ORDERED.**

Dated: Brooklyn, New York  
April 27, 2009

A handwritten signature in black ink, reading "Cheryl Pollak". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Cheryl L. Pollak  
United States Magistrate Judge